HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.174 of 2007

Between:

The Presiding Officer, Mandavalli Mandal Parishad,
G. Raghuram, s/o. Appalaswamy, aged 44 years,
Present Occ: Deputy Executive Engineer,
Panchayat Raj Dept., Mandavalli,
Krishna district

... Appellant

And

Yarlagadda Venkateswara Rao and four others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri V.V. Prabhakara Rao

Counsel for respondent No.1 : Shri R.V. Chalapathi

20-02-2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 24-01-2007 passed by the learned Single Judge, whereby he declined the prayer of the writ petitioner (respondent No.1 herein) for quashing the order of his disqualification on the ground that an effective alternative remedy is available to him, but directed that the interim order passed earlier shall remain operative for a period of three months from the date of receipt of the order.

A perusal of the record shows that respondent No.1 was elected as Member of Mandal Parishad Territorial Constituency (MPTC), Mandavalli-I on the ticket given by Indian National Congress Party. On account of the alleged violation of whip issued by the Party in the

matter of election of the President of the Mandal Parishad, the Presiding Officer (the appellant herein) passed an order dated 21-7-2006, vide which he disqualified respondent No.1. The latter challenged the order of disqualification mainly on the ground that the provision contained in Rule 11 of Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Member (Co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006 is not applicable to him. Along with the writ petition, respondent No.1 filed WPMP No.19179 of 2006 for suspending the operation of order impugned in the writ petition. On 30-8-2006, the learned Single Judge directed the parties to maintain status quo. That order was modified on 12-10-2006 in the following terms:

> "On 30-8-2006, while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.
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> In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this court is of the considered opinion that the order of status quo already granted to be modified and accordingly the operation of the order of the 4th respondent bearing No.171/A/06 dated 21-7-2006 is suspended until further orders."

In the counter-affidavit filed by Sri Ch.Ankineedu, who appears to have got himself impleaded as respondent No.5 in the writ petition, an objection was taken to the very maintainability of the writ petition on the premise that statutory alternative remedy is available to the writ petitioner under Section 153-A of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the 1994 Act').

After hearing the counsel for the parties, the learned Single Judge upheld the objection to the maintainability of the writ petition, but directed that the interim order shall remain operative for three

months from the date of receipt of the order. For the sake of convenient reference, the relevant extract of the order impugned in the writ appeal is reproduced below:

> "It is no doubt true that the mere existence of an alternative remedy may not operate as a bar to exercise the power and jurisdiction under Article 226 of the Constitution of India. The wisdom of the Legislature in conferring jurisdiction on District Court cannot be totally ignored while exercising powers either under Article 32 or under Article 226 of the Constitution of India, as the case may be. It may not be out of context also to observe that it would be appropriate if steps are taken to further clarify the Legislative vacuum, if any created in relation to the granting of interim orders by the concerned District Courts while exercising the jurisdiction conferred under the Act, or otherwise in this regard. In the light of the over-all facts and circumstances and also in the light of the respective stands taken by the parties, this Court is of the considered opinion that it would be just and appropriate to give opportunity to the writ petitioners to raise all these grounds and also additional grounds if any if they choose to do so by invoking the jurisdiction of the competent District Courts in this regard. As far as, G.O.Ms.No.321, PR & RD dated
> 14-8-2006, which had been challenged W.P.No.17778/2006 is concerned, the same is hereby quashed, giving liberty to the competent authority to make appropriate orders in the event of the writ petitioner not approaching the concerned District Court and obtaining appropriate orders within the time granted by this Court as specified hereinafter. Accordingly, in W.P.Nos.15399, 17533, 16824, 18346, 18671 and 21931 of 2006, the interim suspension granted by this Court in the respective writ petitions to be operative for a period of three months from the date of receipt of this order and accordingly liberty is given to the writ petitioners to approach the competent Court, District Courts and institute appropriate proceedings and also move appropriate applications for obtaining interim orders and it is needless to say that the concerned District Courts to make appropriate orders in the light of the facts and circumstances in a particular given case."

Shri V.V. Prabhakara Rao, learned counsel for the appellant assailed the order of the learned Single Judge and argued that after

having come to the conclusion that the writ petition filed by respondent No.1 does not deserve to be entertained on the ground of availability of an effective alternative remedy, the learned Single Judge could not have continued the ad-interim order and that too for a long period of three months. Learned counsel submitted that respondent No.1 can approach the concerned District Court and apply for interim relief, but there is no valid reason or justification for continuing the interim order passed in the writ petition for an unreasonably long period.

Shri R.V. Chalapathi, learned counsel for respondent No.1 defended the direction given by the learned Single Judge and submitted that the Division Bench may not interfere with the same because his client will be shortly filing appropriate petition under Section 153-A of the 1994 Act in District Court, Krishna District.

We have considered the respective submissions and perused the record. Although the learned Single Judge has recorded an unusual lengthy order, the sum and substance thereof is that the remedy available to the writ petitioner against order dated 21-7-2006 passed by the Presiding Officer, Mandal Parishad under Section 153-A of the 1994 Act is an effective alternative remedy. In our opinion, after having held that the remedy available to the writ petitioner under Section 153-A of the 1994 Act is an effective alternative remedy, the learned Single Judge was not at all justified in ordering continuance of the interim order for a long period of three months counted from the date of receipt of the order.

At this stage, Shri R.V. Chalapathi informed us that within a day or two his clients will be filing petition in District Court, Krishna District along with an application for interim relief. In this view of the matter, we do not consider it proper to vacate the interim order in its entirety and feel that ends of justice would be met by suitably curtailing its period.

Hence, the appeal is disposed of with the following directions:

1) Interim order dated 30-8-2006 passed by the learned Single Judge in WPMP No.19179 of 2006, which was modified on 12-10-2006 shall remain operative only till 5-3-2007.

2) If respondent No.1 has already filed petition under Section 153-A along with an application for interim relief or he files such petition hereafter along with an application for interim relief, then District Judge, Krishna District, shall, after hearing the parties, dispose of the same without being influenced by the observations contained in the order of the learned Single Judge.

As a sequel to disposal of the appeal, W.A.M.P.No.305 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 22, 2007
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